



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

DONALD L. WOLFE, Director

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
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P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE

REFER TO FILE: **MP-6**
11.041

May 29, 2007

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**TUJUNGA WASH - PARCELS 454, 636 THROUGH 639, 641, 642,
AND 651 THROUGH 653 - USE AGREEMENT
CITY OF LOS ANGELES
SUPERVISORIAL DISTRICT 3
3 VOTES**

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY
OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:**

1. Find this transaction categorically exempt from the provisions of the California Environmental Quality Act (CEQA).
2. Approve the 20-year Use Agreement between the Los Angeles County Flood Control District and Social and Public Resource Center (SPARC), for the painting, restoration, renovation, operation, and maintenance of the Great Wall of Los Angeles within Tujunga Wash, Parcels 454, 636 through 639, 641, 642, and 651 through 653, located between Burbank Boulevard and Oxnard Street, in the City of Los Angeles.
3. Instruct the Chairman to sign the Use Agreement and authorize delivery to the User.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

This action will allow the District to enter into an Agreement with SPARC for use of a portion of Tujunga Wash, Parcels 454, et al., for the painting, restoration, renovation, operation, and maintenance of the Great Wall of Los Angeles.

The Great Wall mural was painted on the west channel wall of Tujunga Wash in 1974 and covers a half-mile section. SPARC's project includes restoration of the mural, which has suffered extensive damage over the years. The restoration plan consists of reconsolidation and reattachment of loose paint, removal of surface oxidation to revive the original colors, and the application of an ultraviolet coating to preserve the restoration work. Aesthetic recovery also includes repainting the vanishing sections of the mural. As part of their funding, SPARC has submitted an application to the California Cultural Historical Endowment (CCHE) for a grant in the amount of \$1,287,585. The CCHE requires applicants to secure long-term control of the property. Therefore, the receipt of funds from the CCHE is contingent upon the execution of the 20-year Use Agreement.

Implementation of Strategic Plan Goals

This action meets the County Strategic Plan Goal of Service Excellence, as it will provide benefits to the residents of the County in the form of improving the aesthetics of the area.

FISCAL IMPACT/FINANCING

There will be no monetary consideration paid for the Use Agreement.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Section 2, paragraph 5 of the Los Angeles County Flood Control Act provides that the improvement of existing facilities may involve aesthetic treatment in order that the facility will be compatible with existing or planned development in the surrounding area.

The Use Agreement is for 20 years. This project is being done in conjunction with a City of Los Angeles project to replace an existing bridge adjacent to Tujunga Wash. The City of Los Angeles will be entering into a separate Use Agreement with the District for the bridge replacement project.

The Use Agreement has been reviewed and approved by County Counsel as to form.

The Honorable Board of Supervisors
May 29, 2007
Page 3

ENVIRONMENTAL DOCUMENTATION

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act. The project is within the class of projects which have been determined not to have a significant effect on the environment in that it meets the criteria set forth in Sections 15301(a) and 15302(c) of the State Guidelines and Classes 1(d) and 2(a) of the County Environmental Reporting Procedures and Guidelines' Appendix G.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

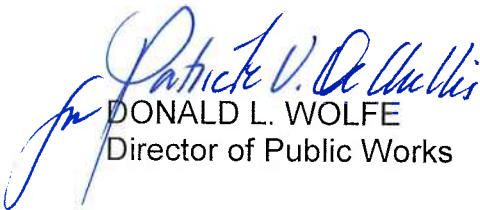
None.

CONCLUSION

Enclosed are three original Use Agreements. Please have them signed by the Chairman and acknowledged by the Executive Officer of the Board. Please return two executed originals to Public Works and retain one original for your files.

Please return one adopted copy of this letter to Public Works.

Respectfully submitted,



DONALD L. WOLFE
Director of Public Works

WH:psr
P6:\BD LTR SPARC

Enc.

cc: Auditor-Controller (Accounting Division - Asset Management)
Chief Administrative Office
County Counsel

AGREEMENT NO. 76112
TUJUNGA WASH
PARCELS 454, 636, 637, 638, 639,
641, 642, 651, 652, & 653
RW MAP NO. 11-RW 25.1
THOMAS GUIDE PAGES 532 E-7 & 562 E-1
THIRD DISTRICT

USE AGREEMENT

This Agreement, entered into on MAY 29, 2007, by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter referred to as DISTRICT),

and

SOCIAL AND PUBLIC ART RESOURCE CENTER (SPARC), a California not for profit corporation (hereinafter referred to as USER),

WITNESSETH

WHEREAS, the DISTRICT owns fee title to that portion of Tujunga Wash between Burbank Boulevard and Oxnard Street, in the community of Valley Glen, City of Los Angeles, State of California (hereafter referred to as the PREMISES); and

WHEREAS, the USER desires at its expense to paint, restore, renovate, operate and maintain a mural known as the Great Wall of Los Angeles (hereinafter referred to as the ARTWORK), on the west side of the channel (hereinafter referred to as ARTISTIC IMPROVEMENTS), within the DISTRICT's fee property limits as indicated above; and

WHEREAS, the DISTRICT, while performing the primary function of flood control, watershed management, and water conservation, is willing to cooperate where feasible with the USER, in the USER's use of that portion of the Tujunga Wash channel to continue between Burbank Boulevard and Oxnard Street, in the City of Los Angeles, as more particularly as shown on Exhibit A, attached hereto, and made a part hereof; and

WHEREAS, the DISTRICT and the USER desire to enter into this Use Agreement to establish the painting, restoration, operation, maintenance, and financial obligations of each party in regard to USER's use of PREMISES.

NOW, THEREFORE, in consideration of the promises and faithful performance by USER and DISTRICT of mutual covenants herein contained, for the period of time herein set forth, the DISTRICT and USER hereto mutually agree as follows:

SECTION I

USER AGREES:

1. To bear all costs in connection with ARTWORK and ARTISTIC IMPROVEMENTS and which are necessary for the USER's use of the PREMISES.
2. To obtain a Permit from DISTRICT's Construction Division, Permits and Subdivisions Unit, prior to commencing any work on PREMISES.
3. To be responsible for operating and maintaining the ARTWORK and ARTISTIC IMPROVEMENTS and not permit trash or rubbish to accumulate, nor to commit, suffer, or permit any waste on the PREMISES or to operate the PREMISES in violation of laws or ordinances. USER shall maintain and clean the PREMISES at a level of service not less than provided at adjacent locations in the area.
 - a. USER shall inspect ARTWORK at least 4 times per year.
 - b. USER shall remove any graffiti from the ARTWORK anytime they discover graffiti or are notified by DISTRICT. It must be removed within the following guidelines:
 1. Remove vulgar graffiti (i.e., profane, obscene, or racist) within 24 hours, Monday through Friday.
 2. Remove other graffiti within 72 hours, Monday through Friday.
4. If property of DISTRICT is damaged by USER or any person entering the PREMISES on behalf of the USER, either expressed or implied, USER shall replace or repair the damaged property within a reasonable time to the satisfaction of the DISTRICT or reasonably compensate the DISTRICT for the damage within ninety (90) days of billing.
5. Without limiting USER's indemnification of the DISTRICT, as minimum, USER shall maintain coverage in the amounts equivalent to the following commercial insurance coverage:
 - Coverage for general liability and property damage with a combined single limit liability in the amount TWO MILLION DOLLARS (\$2,000,000), per occurrence. This coverage is limited to periods of time when the USER is actually engaged in working on ARTISTIC IMPROVEMENTS on the PREMISES under this Agreement and will coincide with the period covered by any Permit under Section One Paragraph Two.

- Workers' Compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for both the DISTRICT and USER against any loss, claim, or damage arising from any injuries or occupation diseases occurring to any worker employed by or any person retained by USER in the course of carrying out the work or services contemplated in this Agreement.
- In the event USER procures commercial insurance policies for this PREMISES, the County of Los Angeles and Los Angeles County Flood Control District, its governing Board, officers, agents, contractors, and employees shall be named as Additional Insured on all policies of liability insurance. In the event such commercial insurance policy is obtained, USER shall furnish DISTRICT a Certificate of Insurance evidencing USER's insurance coverage no later than ten (10) working days after execution of this Agreement, but before USER commences use of the Premises. Upon renewal of said policy, USER shall furnish to DISTRICT a Certificate evidencing USER's continued insurance coverage herein

SECTION II

DISTRICT AGREES:

1. To grant USER permission to use DISTRICT's right of way for purposes stated herein.
2. To inspect the PREMISES for compliance with provisions contained herein or with any Permits issued.

SECTION III

IT IS MUTUALLY UNDERSTOOD AND AGREED:

1. USER and DISTRICT shall have no financial obligation to each other under this Use Agreement, except as herein expressly provided.
2. The DISTRICT, while performing the primary function of flood control, watershed management, and water conservation, is willing to cooperate where feasible with the USER to assist with preservation and continued public display of the ARTWORK, while at the same time not unreasonably impeding the DISTRICT'S conduct of its primary functions and ability to act in the event of an imminent hazard or risk to the public safety.

3. USER owns the ARTWORK, which is the painted mural surface layer. USER makes no claim whatsoever to the underlying surface on which the ARTWORK is painted. USER and the DISTRICT agree that the ARTWORK is removable from the surface of the structure on which it is painted. While it is the DISTRICT's intent to permit ongoing public display of the ARTWORK, circumstances may arise that would make it necessary or prudent for the DISTRICT to remove all or part of the ARTWORK from public display. USER therefore agrees that, except as specifically limited herein, the DISTRICT may remove, relocate, move, replace, transport, or store, in whole or in part, the ARTWORK, as deemed necessary by the DISTRICT. In the event DISTRICT does so, it shall notify USER within five (5) business days and permit USER at its own expense to retrieve the ARTWORK from the location to which the DISTRICT removed the ARTWORK.
4. If the DISTRICT desires to modify or alter the structure on which the ARTWORK is affixed in a way that might incidentally modify, distort, mutilate or destroy the ARTWORK, the parties agree to the following provisions, which expressly modify the rights of integrity as set out in the Visual Artists Rights Act ((17 U.S.C. §106A and §113, VARA) and the California Art Preservation Act ((Cal. Civ. Code §987, CAPA). The rights of attribution as set out in VARA and CAPA are not hereby modified.
 - a. Imminent Hazard. In the event that the DISTRICT determines in good faith that circumstances giving rise to an Imminent Hazard to public safety exist and that time is of the essence in order to protect life, property, or the PREMISES from impending fire, fire damage, earthquake damage, flood damage, or any other condition the DISTRICT determines to be an "Imminent Hazard" requiring immediate action, the DISTRICT may authorize the immediate removal of or damage to any or all of the ARTWORK. The DISTRICT shall make a good faith effort to provide telephone notice to USER prior to or simultaneously with such Imminent Hazard removal or damage, and in any event the DISTRICT shall notify USER in writing within ten (10) days after any such Imminent Hazard removal or damage. The DISTRICT and USER shall then cooperate to consider options for the final disposition, conservation, repair, reinstallation, or maintenance of the ARTWORK or parts of the ARTWORK remaining on the PREMISES. If the USER fails to enter into a restoration agreement acceptable to the DISTRICT within 60 days of the Imminent Hazard notice, the USER shall have the right of first refusal to remove and take all or part of the remaining ARTWORK at its sole expense into its possession within another 60 days. Thereafter, DISTRICT shall have no further obligation to USER or the ARTWORK.

- b. Substantial Incompatibility. Except in the event of an Imminent Hazard as provided in the preceding paragraph 4(a), and if there develops a Substantial Incompatibility between the USER's permitted use herein of the PREMISES and DISTRICT's current or planned use of PREMISES for flood control, watershed management, water conservation, utility, or transportation purposes, including but not limited to increasing the capacity of the channel, restoring structural integrity, and environmental restoration, the DISTRICT may remove or damage all or part of the ARTWORK after giving USER one-hundred and twenty (120) days written notice before removal or damage is done to the ARTWORK. During the 120-day notice period, DISTRICT agrees to discuss and cooperate with USER concerning methods of removal, transportation, and/or conservation of the ARTWORK to permit its preservation to the greatest extent possible even if it cannot continue to be affixed to the PREMISES. The USER shall have the right of first refusal to remove and take all or part of the ARTWORK at its sole expense into its possession during the 120-day notice period. Thereafter, DISTRICT shall have no further obligation to USER or the ARTWORK.

5. Indemnification.

- a. Except to the extent caused by DISTRICT's negligence or willful misconduct, USER agrees to indemnify, defend, and hold harmless DISTRICT, its governing Board, officers, employees, engineers, contractors, and agents against any claims, demands, liabilities, damages, costs, and expenses of any nature whatsoever, arising from or in connection with (1) the ARTWORK or ARTISTIC IMPROVEMENTS or (2) breach of any of USER's obligations under this Agreement. For purposes of this Section 3, DISTRICT shall mean the Los Angeles County Flood Control District, the County of Los Angeles and their governing Boards, officers, agents and employees.
- b. Except to the extent caused by DISTRICT's negligence or willful misconduct, DISTRICT shall not be liable for any loss occurring due to the use of the PREMISES by USER; for injury, loss, death to any person whomsoever, including third parties, any damage or destruction to the PREMISES, at any time, occasioned by or arising out of, indirectly, solely, or contributory by: (1) any act, activity or omission of USER or anyone holding under USER; (2) the occupancy or use of the PREMISES or any part thereof, by or under USER; and/or (3) any state or condition of the PREMISES caused by or relating to ARTWORK or ARTISTIC IMPROVEMENTS thereon or any part thereof.

- c. Except to the extent attributable to the concurrent negligence or willful misconduct of USER, DISTRICT agrees to indemnify, defend and hold harmless USER against the claims of any third parties for any damage, destruction, personal injury or death, attributable to the negligence or misconduct of the DISTRICT.
 - d. Each party agrees to include the other within the protection of any indemnification clause contained in any contract relating to the PREMISES.
- 6. Except to the extent caused by DISTRICT's negligence or willful misconduct, USER releases DISTRICT of all liability for any loss, cost or expense USER may sustain as a result of damage to or destruction of ARTWORK or any property of USER on or adjacent to the PREMISES caused by DISTRICT's flood control, watershed management or water conservation facilities and operations. For purposes of this Section 4, DISTRICT shall mean the Los Angeles County Flood Control District, the County of Los Angeles and their governing Boards, officers, agents and employees.
- 7. Except as otherwise provided herein, the DISTRICT shall not intentionally modify the ARTWORK.
- 8. DISTRICT, its Board, any authorized officer, engineer, employee, contractor, through its agents or representatives, shall have full right and authority to enter in and upon the PREMISES at any and all reasonable times during the term of this Use Agreement, all without interference or hindrance by USER, its agents, officers, contractors, employees or representatives for the purpose of inspecting the same and to serve or post any notice required or permitted by law for the protection of any right or interest of the DISTRICT.
- 9. Except as set forth herein, USER hereby waives any and all integrity rights against the DISTRICT arising out of the Federal Visual Artists Rights Act and the California Art Preservation Act, including any claims arising out of negligent damage to the ARTWORK by maintenance workers or other employees or against the DISTRICT, and any failure by the DISTRICT.
- 10. No VARA or CAPA rights are waived as to third parties not acting on DISTRICT's behalf or without DISTRICT's express permission and authority.

11. Pursuant to the Copyright Act of 1976 (17 U.S.C. 101 et seq.), USER grants to DISTRICT an irrevocable and non-exclusive worldwide license to reproduce, to distribute, and/or to display two-dimensional reproductions of the ARTWORK in any manner except for fine art prints or limited edition multiples, including, without limitation, advertising, brochures, media publicity, and catalogues or similar publications for any non-commercial DISTRICT-related promotional use. DISTRICT shall place a copyright notice, naming the same person or persons listed as the copyright owners on the copyright registration with the U.S. Copyright Office, in the form and manner required to protect copyrights in the ARTWORK under United States copyright law. If DISTRICT desires to use ARTWORK for commercial use, a separate agreement must be developed between DISTRICT and USER.
12. No advertising is allowed on County and/or DISTRICT right of way.
13. USER acknowledges that the County and/or DISTRICT shall have no duty to maintain the ARTWORK nor to keep it free from damage or disfigurement, whether due to intentional acts, negligence, or the passage of time, subject to Section III, paragraphs 3, 4, and 7 above.
14. Hazardous Materials: Except as to fuels, lubricants and products associated with motorized vehicles and/or equipment or maintenance-related substances, USER shall not cause or allow the presence, use, storage, or disposal of any hazardous substances on or about the PREMISES without the prior written consent of the DISTRICT. In the event of spillage, leakage or escape of any hazardous substance onto the PREMISES, USER shall immediately notify DISTRICT by calling (800) 675-4357. If the spillage, leakage or escape was caused by USER, USER shall promptly remove any such substance from the PREMISES to the DISTRICT's satisfaction. In addition to removing any USER's HAZARDOUS substances, USER shall be liable for and reimburse DISTRICT for any and all costs and expenses that DISTRICT may incur or suffer. Such responsibility shall also include costs or expenses as DISTRICT may incur by reason of Federal, State, local or other authoritative agency's laws and regulations. Notwithstanding the foregoing, USER shall have no responsibility regarding any spill, leak or escape associated with any of DISTRICT's tenants, licensees or easement holders.
15. USER shall be the lead agency and will provide the necessary environmental clearances and any other Permits as required by law.
16. The term of this Use Agreement shall be for twenty (20) years (Initial Term), subject to the DISTRICT's right to terminate as provided for in paragraph 4 above.

17. USER shall have the right to renew this Use Agreement beyond the Initial Term on a year-to-year basis for a period not to exceed twenty (20) years, provided a written request from the USER is received by the DISTRICT no earlier than twelve (12) months or later than six (6) months prior to the end of the Initial Term and upon written approval of DISTRICT. The DISTRICT shall have the right to cancel this Use Agreement for any reason, after the Initial Term, upon thirty (30) days' written notice to USER.
18. Except as otherwise stated in this Use Agreement, this Use Agreement can only be cancelled by USER as provided herein or terminated by DISTRICT for breach of any term or provision in this Use Agreement, provided, however, that a failure to perform any provision, covenant or condition of this Use Agreement shall not be deemed a breach if cured within thirty (30) days of written notice of breach by the other party, identifying the breach.
19. Notices.

All notices herein that are to be given or that may be given by either party shall be in writing and shall be deemed to have been given three business days after deposit in the U.S. Mail addressed as follows:

To DISTRICT:

Mapping & Property Management Division
Los Angeles County Flood Control District
Department of Public Works
900 South Fremont Avenue, 10th Floor
Alhambra, CA 91803-1331

[tel.: (626) 458-7065 or (626) 458-7072; fax (626) 289-3618
for Emergencies, contact (626) 458-HELP (4357)]

To USER:

Social and Public Art Resource Center (SPARC)
685 Venice Boulevard
Venice, CA 90291

Tel: (310) 822-9560 Fax: (310) 827-8717
www.sparcmurals.org

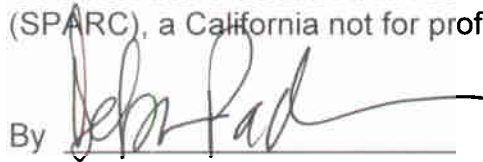
ACKNOWLEDGMENTS

IN WITNESS WHEREOF, the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, by order of its Board of Supervisors, has caused the Use Agreement to be subscribed by the Chairman of the Board and the seal of the DISTRICT to be affixed hereto and attested by its Executive Officer of the Board of Supervisors, and the USER has hereunto subscribed their names, the date and year first above-written.

USER

SOCIAL AND PUBLIC ART RESOURCE CENTER
(SPARC), a California not for profit corporation

By



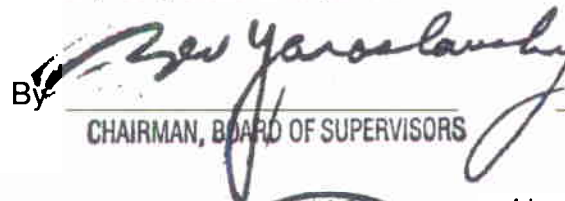
5/3/07

Date

DISTRICT

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic

By



CHAIRMAN, BOARD OF SUPERVISORS

MAY 29 2007

Date

ATTEST:

SACHI A. HAMAI, Executive Officer
of the Board of Supervisors
of the County of Los Angeles

By:



Deputy



I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Directors

By



Deputy

Approved as to Form:

RAYMOND G. FORTNER, JR.
County Counsel

By



Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

67

MAY 29 2007


SACHI A. HAMAI
EXECUTIVE OFFICER

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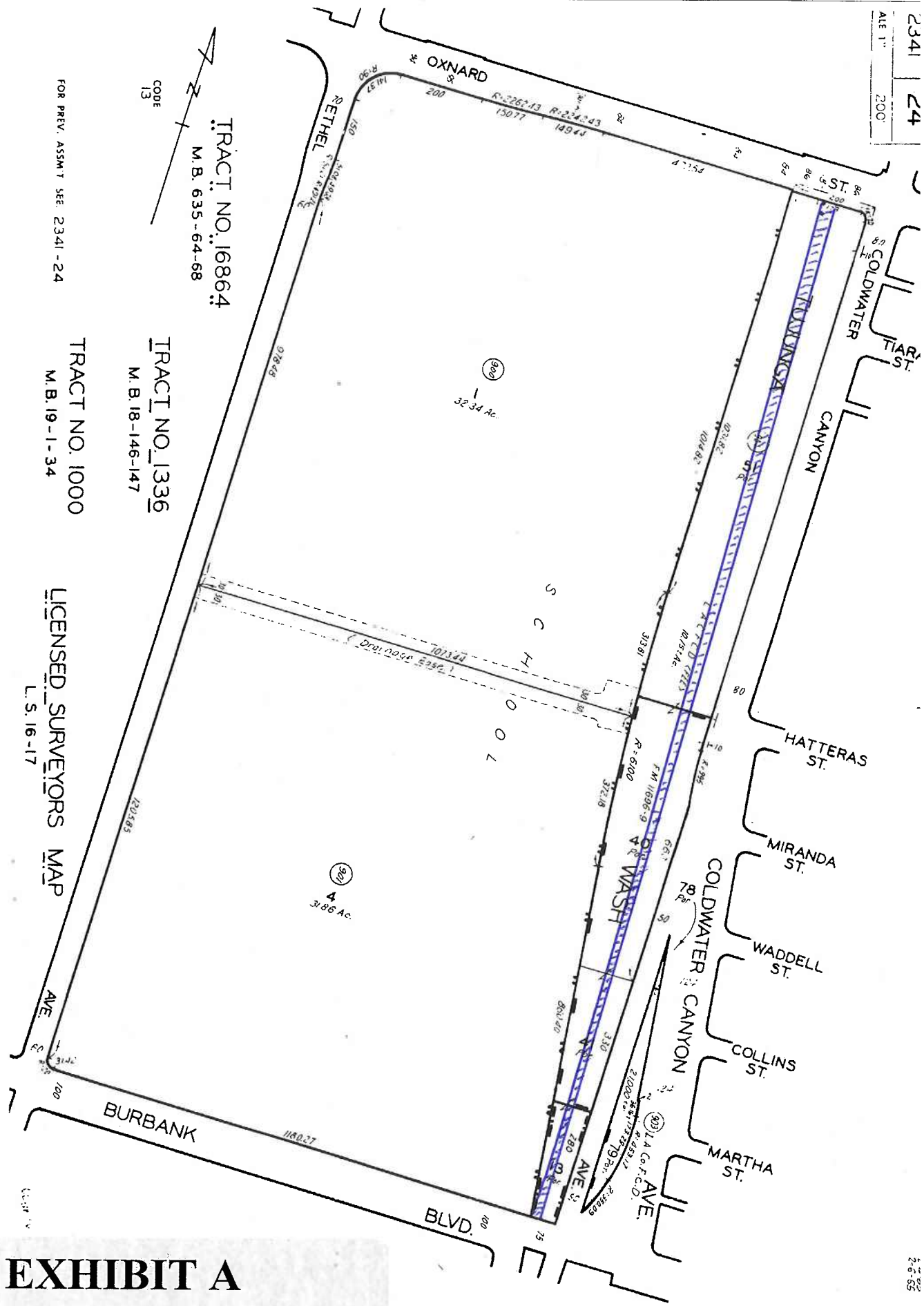


EXHIBIT A

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On January 6, 1987, the Board of Supervisors for the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies, and authorities for which said Board so acts adopted a resolution pursuant to Section 25103 of the Government Code which authorized the use of facsimile signatures of the Chairman of the Board on all papers, documents, or instruments requiring his/her signature.

The undersigned hereby certifies that on this 29TH day of MAY, 2007, the facsimile signature of ZEV YAROSLAVSKY, Chairman of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT was affixed hereto as the official execution of this document. The undersigned further certifies that on this date, a copy of the document was delivered to the Chair of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

In witness whereof, I have also hereunto set my hand and affixed my official seal the day and year above written.



(LACFCD-SEAL)

SASHI A. HAMAI,
Executive Officer
of the Board of Supervisors
of the County of Los Angeles

By  Deputy

ACKNOWLEDGMENT FORM

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles) ss.

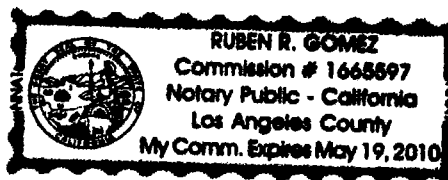
On 5-3-07, before me, RUBEN R. GOMEZ (here insert name), a Notary Public,
the undersigned, personally appeared Debra J.T. Padilla Executive Director of SPARC
, (insert name and title)

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Signature

RUBEN R. GOMEZ
(Name, Typed or Printed)



NOTARIES: ATTACH ADDITIONAL OR OTHER FORMS, IF REQUIRED

ACKNOWLEDGMENT FORM

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____, before me, _____ (here insert name), a Notary Public,
the undersigned, personally appeared _____
, (insert name and title)

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

(Name, Typed or Printed)

NOTARIES: ATTACH ADDITIONAL OR OTHER FORMS, IF REQUIRED